

REMARKS

By this paper, Applicants have amended claims 36, 37, 39, 40, 41, 42, 43, 44, and 45. Applicant has not added any claims. This amendment contains no new matter. Entry of this amendment is respectfully requested.

Claim Rejections – 35 USC § 103***Claims 36, 37, 43 – 46***

The Examiner has rejected claims 36, 37 and 43 - 46 under 35 USC Section 103 as being unpatentable over Mueller, U.S. Patent No. 5,706,626 ("Mueller") in view of Horowitz, US Patent No 3,623,288 ("Horowitz"), Utzman, U.S. Patent 5,870,870 ("Utzman"), and Yoshiyuki, Japanese Patent Reference 60-122420 (Yoshiyuki).

In relevant part the Examiner suggests taking elements from at least three different references to combine them with Mueller. The Examiner argues that Horowitz and Mueller suggest that the shear resisting assembly can be made with wood components, that Utzman supplies the planar-shear resisting element made of wood and the use of nails and that the clip of Yoshiyuki corresponds to the boundary edging member.

Applicants maintain that the Examiner is using hindsight to make the combination. Applicants can find no suggestion in the references to modify them in the manner as the Examiner has done. Utzman modified the fasteners and the shear panel to make a stronger shear resisting assembly, and Mueller and Yoshiyuki are concerned with metal framing members and screws and as such do not suggest the improvements of the present invention when nails and wood framing members are used.

To make the distinctions more clear between the present invention and the references cited by the Examiner, Applicants have amended independent claims 36, 37, 43, 44 and 45 to distinguish the nails of Utzman and the clasp of Yoshiyuki.

With respect to the nails of Utzman, as amended these claims now call for common nails having a flanged head and shank portions of uniform diameter and the shank portions of each of the nails is closely received by the shear-resisting element along the portion of the shank embedded in the shear resisting element and with the flanged head of the nails disposed adjacent to the distal face of the shear-resisting element. Support for this amendment is found in figures 4 and 5.

With respect to the clasp of Yoshiyuki, as amended these claims now call for the elongated leg of the boundary edging member to receive a plurality of edge fasteners. Support for this amendment is found in figure 8 of the drawings.

Claim 46 depends from claim 45 incorporating all of its limitations. Applicants believe that by these amendments claims 36, 37, and 43 - 46 should be considered allowable.

With specific regard to claim 36, Applicants have amended claim 36 to say that the top plate fasteners are closely received by both the top plate of the wall and the top strut of the shear-resisting assembly. Support for this amendment is found in figure 10 of the drawings.

With specific regard to claim 37, which calls for the opening in the bottom strut for the foundation anchor to be a "notch in said bottom strut that allows said bottom strut to slide into place." Applicants have amended the claim to say that bottom strut slides into place "at a right angle to said planar shear-resisting element" Support for this amendment is found in the specification at paragraph 41 of the published application.

With specific regard to independent claim 44, Applicants have further added the limitation that the elongated leg of the boundary edging member is disposed on the distal face of the planar shear-resisting element and the flanged head of the nail contacts said elongated leg of the boundary edging member. Support for this limitation is found in figure 5.

With specific regard to independent claim 45 and dependent claim 46 which call for the shear resisting element to be made from a plurality of adjoining structural panels (claim 45) and for intermediate studs to be disposed at the joints of the structural panels, Applicants respectfully note that the Examiner has not demonstrated how Mueller teaches the limitations of multiple structural panels, and so Applicants respectfully request that the Examiner remove these specific rejections.

Claim Rejections – 35 USC § 103

Claim 38

The Examiner has rejected claim 38 under 35 USC Section 103 as being unpatentable over Mueller, in view of Horowitz, Utzman, Yoshiyuki, and Haydon, U.S. Patent 5,279,088.

Claim 38 depends from claim 37 and therefore Applicants believe claim 38 is patentable over the cited references for the same reasons stated above with respect to claim 37.

Claim Rejections – 35 USC § 103

Claims 39 - 42

The Examiner has rejected claims 39 - 42 under 35 USC Section 103 as being unpatentable over Mueller, in view of Horowitz, Utzman, Yoshiyuki, and Hardy, U.S. Patent 6,148,583.

Applicants have amended independent claim 39 from which claim 40 depends, incorporating all of its limitations, in the same manner as they have amended claim 37 and therefore believe claims 39 and 40 are patentable over the cited references of Mueller, Horowitz, Utzman and Yoshiyuki for the same reasons stated above.

Applicants have also amended independent claim 41 from which claim 42 depends, incorporating all of its limitations, in the same manner as they have amended claim 37 and therefore believe claims 41 and 42 are patentable over the cited references of Mueller, Horowitz, Utzman and Yoshiyuki for the same reasons stated above.

With specific regard to claims 39 and 40, which calls for the opening in the bottom strut for the foundation anchor to be a "notch in said bottom strut that allows said bottom strut to slide into place." Applicants have amended the claims to say that bottom strut is slide into place "at a right angle to said planar shear-resisting element" Support for this amendment is found in the specification at paragraph 41 of the published application.

With specific regard to claims 41 and 42, which calls for the holdown fasteners to be inserted only a selected distance into said first and second chords without passing all the way through, Applicants note that as taught by the specification at page 10, line 18 this is done so that the shear-resisting assembly can fit closely between the studs of the wall. Applicants have amended claims 41 and 42 to provide structural limitations to the claim that demonstrate this benefit. Support for this amendment is found in the figure 10.

Applicants respectfully request that the rejection of the claim be removed.


Allowable Subject Matter

The Applicant would like to thank the Examiner for allowing claim 47.

Conclusion

Applicant believes the claims are currently in condition for allowance and respectfully requests the same. Please direct any calls in connection with this application to the undersigned at (510) 832-4111.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Charles R. Cypher", is written over a horizontal line.

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